FILE COPY

No. 1098 49

In the Supreme Court of the United States

OCTOBER TERM, 1946

WILLIAM SHAPIRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

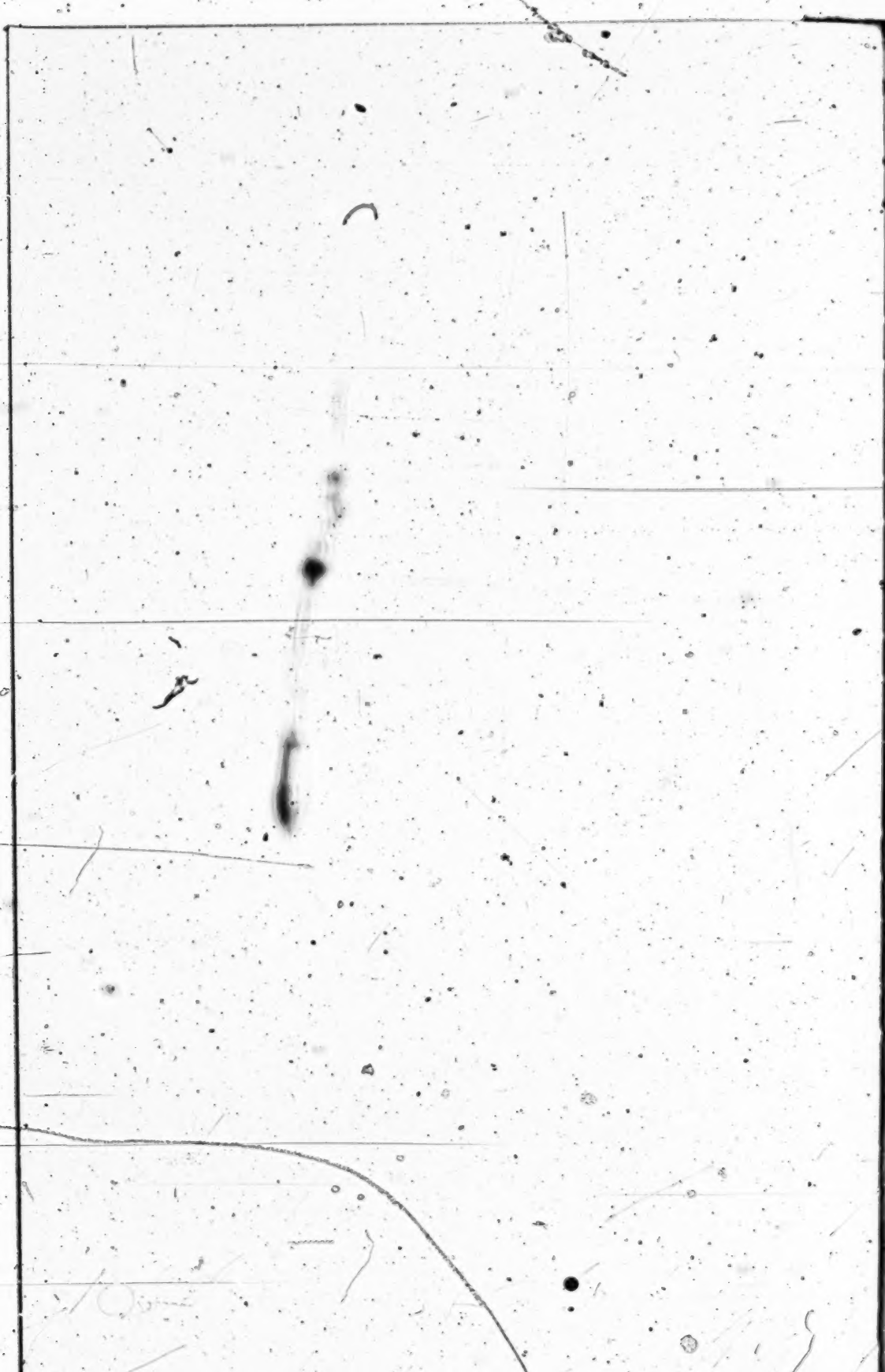
MEMORANDUM FOR THE UNITED STATES

INDEX

CITATIONS

Cases:	Page
Hoffman, In re, 68 F. Supp. 53	3, 4
United States v. *Belt*, 319 U. S. 521	4
United States v. *Goldman*, 277 U. S. 229	4
Statutes:	
Act of March 3, 1901, c. 854, § 935 (D. C. Code 1940, § 23–105)	4
Compulsory Testimony Act of February 11, 1893 (49 U. S. C. 46)	1
Criminal Appeals Act, as amended by the Act of May 9, 1942 (18 U. S. C., Supp. V, 682)	4
Emergency Price Control Act, Section 202 (g) (50 U. S. C. App., Supp. V, 922 (g))	1, 3

786862—47



In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1098

WILLIAM SHAPIRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner was convicted on five counts of an information returned against him in the United States District Court for the Southern District of New York, charging violations of the Emergency Price Control Act (R. 3–39, 120), and was sentenced to pay a fine of $1,000 on each count (R. 55).

Before trial, petitioner interposed a plea in bar, claiming immunity from prosecution by virtue of Section 202 (g) of the Emergency Price Control Act (50 U. S. C. App., Supp. V, 922 (g)) and the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (49

U. S. C. 46).[1] In his plea, he alleged that he had been served with a subpoena *duces tecum* requiring him to produce before an attorney of the Office of Price Administration "all duplicate sales invoices, sales books, ledgers, individual records, contracts and records relating to the sale of all commodities from September 1st, 1944, to September 28th, 1944"; that he appeared pursuant to the subpoena and claimed his constitutional privilege against self-incrimination and that he was not waiving his immunity under the statutes; that despite such claim, he was directed to, and did turn over his books and records to the O. P. A. attorney; and that the prosecution was based upon information derived from such books and records. (R. 42–53.) The plea in bar was overruled (R. 54).

On appeal, the Circuit Court of Appeals for the Second Circuit affirmed the judgment against petitioner (R. 169), holding that the constitutional privilege against self-incrimination does not extend to records required by law to be kept, and that the statutory immunity granted by Section 202 (g) of the Emergency Price Control Act and the Compulsory Testimony Act of 1893 did not extend to one who produced records falling outside the scope of the constitutional privilege (R. 163–168).

The sole question presented by the petition for certiorari is the scope of the immunity pro-

[1] These provisions are copied in the petition for certiorari at pp. 6–7.

visions of Section 202 (g) of the Emergency Price Control Act and the Compulsory Testimony Act as applied to records required by law to be kept which have been produced pursuant to a subpoena after a claim of privilege. Although we believe that the holding below is correct for the reasons stated in the court's opinion, we do not oppose the granting of the petition for a writ of certiorari for the following reasons:

1. As appears from the decision below (R. 164, fn. 2), the question is an important one which affects not only the Emergency Price Control Act, but many other federal regulatory statutes which confer upon administrative agencies power to require and to subpoena records, and which incorporate by reference or by terminology the immunity provisions of the Compulsory Testimony Act of 1893. The question whether such immunity provisions extend to subpoenaed records required by law to be kept has not been, but should be, definitely decided by this Court.

2. In *In re Hoffman*, 68 F. Supp. 53, the District Court for the District of Columbia held, contrary to the decision below, that Section 202 (g) of the Emergency Price Control Act and the Compulsory Testimony Act of 1893 did confer immunity on an indivdual who produced records pursuant to a subpoena issued by the Price Administrator, even though such records were required by law to be kept. That decision was reached on a plea in bar interposed in a criminal

contempt proceeding for violation of an injunction. An appeal was taken to the Court of Appeals for the District of Columbia under the Act of March 3, 1901, § 935 (D. C. Code 1940, § 23–105). We have, however, reached the conclusion that the local District of Columbia statute was supplanted *pro tanto* by the Criminal Appeals Act, as amended by the Act of May 9, 1942 (18 U. S. C., Supp. V, 682), (cf. *United States* v. *Belt*, 319 U. S. 521), and that the Criminal Appeals Act covers a plea in bar in a criminal contempt proceeding (*United States* v. *Goldman*, 277 U. S. 229). Under the Criminal Appeals Act, the appeal in the *Hoffman* case, from the judgment sustaining a plea in bar, should have been taken to this Court. We are consequently filing in the Court of Appeals a motion to have the case certified to this Court pursuant to the provisions of the Criminal Appeals Act.

Since the *Hoffman* case involves the identical question of law which is presented by the instant petition, and since we believe that that case will shortly be certified to this Court, it seems desirable that the instant case be considered together with the appeal in the *Hoffman* case. Accordingly, we concur in the granting of the petition for certiorari.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

MARCH 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947